

ESTTA Tracking number: **ESTTA434878**

Filing date: **10/11/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Mendias & Milton, LLC		
Entity	Limited liability company	Citizenship	Texas
Address	3333 Allen Parkway #2507 Houston, TX 77019 UNITED STATES		

Attorney information	Deborah L. Lively; Douglas C. Heuvel Thompson & Knight LLP 1722 Routh Street, Suite 1500 Dallas, TX 75201 UNITED STATES deborah.lively@tklaw.com, douglas.heuvel@tklaw.com Phone:214-969-1700		
----------------------	--	--	--

Applicant Information

Application No	85017519	Publication date	09/13/2011
Opposition Filing Date	10/11/2011	Opposition Period Ends	10/13/2011
Applicant	FITFAST, LLC. 402 HEYWOOD AVE ORANGE, NJ 07050 UNITED STATES		

Goods/Services Affected by Opposition


Class 043. All goods and services in the class are opposed, namely: Restaurant

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3823590	Application Date	09/29/2008
Registration Date	07/27/2010	Foreign Priority Date	NONE
Word Mark	MY FIT FOODS EAT FIT. LIVE FIT.		

Design Mark	
Description of Mark	The mark consists of a stick figure in the color black with a white face and a black beard and wearing a gray cap with black trim. The stick figure has its legs crossed and is leaning on the stylized words "MY FIT" which appear in the color red and which is stacked on the stylized word "FOODS" which appears in the color black and is stacked on the stylized phrase "EAT FIT. LIVE FIT." which appears in the color gray.
Goods/Services	Class 029. First use: First Use: 2008/04/01 First Use In Commerce: 2008/04/01 Prepared meals consisting primarily of meat, fish, poultry or vegetables Class 043. First use: First Use: 2008/04/01 First Use In Commerce: 2008/04/01 Food preparation services featuring fresh, properly proportioned, healthy meals designed to fuel metabolism and burn fat and made to order for delivery or pick up

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	MY FIT FOODS		
Goods/Services	prepared meals; food preparation services featuring fresh, properly proportioned, healthy meals for delivery or pick up		

Attachments	77581411#TMSN.jpeg (1 page)(bytes) (1) Notice of Opposition filed 10-11-11.pdf (6 pages)(1347290 bytes)
-------------	---

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/deborah l. lively/
Name	Deborah L. Lively; Douglas C. Heuvel
Date	10/11/2011

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application of:	Fitfast, LLC.
Serial No.:	85/017519
Filed:	April 19, 2010
Trademark:	FITFOOD
Int'l Classes:	43
Published:	September 13, 2011

Mendias & Milton, LLC,	§	
Opposer,	§	
	§	
v.	§	Opposition No. _____
	§	
Fitfast, LLC.,	§	
Applicant.	§	
	§	
	§	

NOTICE OF OPPOSITION

Mendias & Milton, LLC (“Opposer”), a limited liability company of Texas, having a corporate address of 3333 Allen Parkway #2507, Houston, Texas 77019, believes that it will be damaged by registration of the mark shown in Application Serial No. 85/017519 filed on April 19, 2010, in International Class 43, and hereby opposes the same.

As grounds for opposition, it is alleged that:

1. On or about April 19, 2010, Applicant, Fitfast, LLC., a limited liability company of New Jersey with a corporate address of 402 Heywood Ave., Orange, New Jersey 07050 (“Applicant”), filed an application with the U.S. Patent and Trademark Office, Application Serial No. 85/017519 (the “Application”), seeking registration on the Principal Register of the trademark “FITFOOD” (“Applicant’s Mark”). The Application

covers use of the mark with “restaurant” services in International Class 43 and was filed based upon an intent to use the mark in commerce.

2. Commencing at least as early as April 1, 2008, Opposer began using the mark MY FIT FOODS in connection with food preparation services and prepared meals (“Opposer’s Mark”).

3. Opposer is the owner of the U.S. Registration for MY FIT FOODS & Design, Reg. No. 3,823,590, which was filed on September 29, 2008 and registered on July 27, 2010 (the “Registration”). The Registration covers “prepared meals consisting primarily of meat, fish, poultry or vegetables” in International Class 29 and “food preparation services featuring fresh, properly proportioned, healthy meals designed to fuel metabolism and burn fat and made to order for delivery or pick up” in International Class 43.

4. Opposer first used the mark identified in its Registration (“Registered Mark”) at least as early as April 1, 2008 in association with the preparation and sale of healthy, appropriately proportioned, nutritious meals as well as with prepared and packaged meals.

5. Through the marketing of its goods and services, Opposer has created extensive good will and consumer recognition in Opposer’s Mark and Registered Mark, and the trade and purchasing public have come to recognize MY FIT FOODS as signifying Opposer and as identifying Opposer as the source of goods and services offered under the Opposer’s Mark and Registered Mark.

6. As a result of Opposer’s extensive marketing efforts, Opposer’s Mark and Registered Mark are now famous marks within the meaning of 15 U.S.C. § 1125(c).

7. Opposer has continuously used its MY FIT FOODS mark and Registered Mark since at least April 1, 2008, and such use predates the April 19, 2010 filing date of the Application.

8. On information and belief, Opposer commenced use of Opposer's Mark and filed the application for the Registered Mark prior to any use of Applicant's Mark.

9. As the senior user of Opposer's Mark and Registered Mark, Opposer has priority rights over Applicant's Mark.

10. The restaurant services identified in the Application are closely related to Opposer's food preparation and take out services offered under Opposer's Mark and Registered Mark and are such that can be provided through the same channels of trade to the same prospective consumers.

11. In view of the similarity of the respective marks and the related nature of the services, Applicant's Mark so resembles Opposer's Mark and Registered Mark as to be likely to cause confusion, or to cause mistake or to deceive. The general public and others familiar with Opposer's Mark and Registered Mark will be likely to believe that Applicant's services have originated from Opposer or were offered in association or affiliation with, or under authorization by, Opposer. Thus, Applicant's Mark, as used with its proposed services, will lead persons familiar with Opposer's Mark and Registered Mark to believe that Applicant's services are offered by, in association or affiliation with, or under license from, Opposer. Such confusion, mistake, and deception regarding the origin of Applicant's services are likely to cause irreparable harm to Opposer.

12. If Applicant is permitted to register Applicant's Mark for the services specified in the Application herein opposed, such use and registration will result in confusion in the trade due to the similarity between Applicant's Mark and Opposer's Mark and Registered Mark, thereby damaging and injuring Opposer.

13. Furthermore, any objection or fault found with Applicant's services marketed under Applicant's Mark may reflect upon and injure the reputation that Opposer has established for the goods and services offered under Opposer's Mark and Registered Mark.

14. Additionally, Applicant's Mark, by reason of its similarity to Opposer's Mark and Registered Mark, will be able to gain a subliminal or subconscious association to such marks and thereby trade on the reputation of Opposer.

15. Opposer will be injured by the granting of a Certificate of Registration to Applicant for the Applicant's Mark because Applicant would obtain thereby at least a prima facie exclusive right to use such mark. Such registration would be a source of damage and injury to Opposer and the public.

16. If Applicant is permitted to register Applicant's Mark for the services specified in the Application herein opposed, such use and registration would result in dilution of Opposer's Mark and Registered Mark under 15 U.S.C. § 1125(c) thereby damaging and injuring Opposer.

WHEREFORE, Opposer respectfully prays that its Opposition be sustained and the application for registration, Application Serial No. 85/017519, by Applicant be denied and refused.

Dated: October 11, 2011

Respectfully submitted,

THOMPSON & KNIGHT LLP
ATTORNEYS FOR OPPOSER



Deborah L. Lively
Douglas C. Heuvel

One Arts Plaza
1722 Routh Street, Suite 1500
Dallas, Texas 75201
(214) 969-1700
(214) 969-1751 (Fax)


Certificate of Service

I hereby certify that a true and complete copy of the foregoing Notice of Opposition has been served on Fitfast, LLC by mailing said copy via First Class mail to:

Fitfast, LLC.
402 Heywood Ave.
Orange, New Jersey 07050

on this 11th day of October 2011.

Signed: _____


Deborah L. Lively